

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

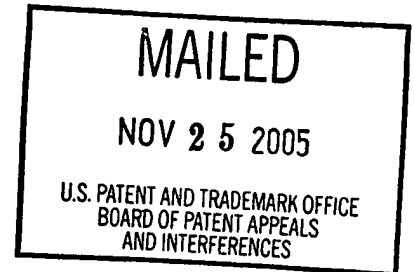
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK LELENTAL,
CHARLES C. ANDERSON,
JOHN M. POCHAN,
JAMES L. WAKLEY and JAMES F. ELMAN

Application No. 10/036,126

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER



This application was electronically received at the Board of Patent Appeals and Interferences on October 24, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the file indicates that on March 17, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c). 37 CFR § 41.37(c) states in part:

(vi) Grounds of rejection to be reviewed on appeal. A concise statement of each ground of rejection presented for review.

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) Related proceedings appendix. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application reveals that the following sections are missing from the Appeal Brief:

- (1) "Grounds of rejection to be reviewed on appeal" as set forth in 37 CFR § 41.37(c)(1)(vi) (replaces "Issues for Review" and "Grouping of Claims");
- (2) "Evidence appendix" as set forth in 37 CFR § 41.37(c)(1)(ix); and
- (3) "Related proceedings appendix" as set forth in 37 CFR § 41.37 (c)(1)(x).


Additionally, the Examiner's Answer is found to be non-compliant with the headings as set forth in the new rules under 37 CFR § 41.37 effective September 13, 2004. It is required that a new Examiner's Answer be provided in compliance with the new rules.

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- have the appellants submit a substitute Appeal Brief in compliance with the new rules set forth in 37 CFR § 41.37 (c);
- vacate the previous examiner's answer and submit a revised examiner's answer in accordance with the substitute appeal brief and the new rules effective September 13, 2004; and
- for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



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